

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD¹
REGION 32

NEWMONT GOLD COMPANY
Employer

and

Case 32-UC-359

OPERATING ENGINEERS LOCAL
UNION NO. 3, INTERNATIONAL
UNION OF OPERATING ENGINEERS,
AFL-CIO

Petitioner

DECISION AND ORDER

Petitioner filed the above-captioned Petition on March 15, 1999,² seeking to add warehousemen in the Employer's mining , maintenance, and process operations departments, parts expeditors, temporary foremen in mining operations, and the secretary in mining operations to its existing recognized bargaining unit of full-time and regular part-time production and maintenance employees in the Employer's mining and milling departments; excluding office clerical employees, assayers, refinery employees, professional employees, guards, and supervisors as defined in the Act. By this petition it seeks to do so because it alleges that the Employer's temporary assignment of bargaining unit employees to perform work in said classifications has increased in both frequency and duration so as to create a sufficient community of interest between the currently non-represented permanent employees in those classifications and bargaining unit employees to warrant inclusion of those classifications into the bargaining unit. However, it is noted that bargaining unit employees temporarily assigned to those classifications at all times remain covered by the collective bargaining agreement as if still performing their regular duties, with no detriment to their seniority or to other members of the bargaining unit. The collective bargaining agreement between Petitioner and the Employer, which does not expire until September 30, 1999, does not cover the employees whom Petitioner seeks to add to the bargaining unit.³ Furthermore, the classifications at issue were in existence at the time of the execution of the contract, and the employees in those classifications are not performing a new operation.

¹ Herein called the Board.

² All dates herein are 1999 unless otherwise noted.

³ None of the subject classifications are specified as being included in the bargaining unit either in Section 02.01.00 or Appendix A of the contract.

Because granting the petition at this time would be disruptive of the bargaining relationship voluntarily entered into by the parties when they executed said collective bargaining agreement, on April 16, the undersigned issued an Order To Show Cause why the Petition should not be dismissed. In its response to the Order To Show Cause, Petitioner notes that as the current collective bargaining agreement will expire on September 30, processing of the Petition would be appropriate at this time. However, beyond the timeliness issue, it is clear that the Petition herein seeks not to clarify the existing bargaining unit by adding new classifications of employees performing bargaining unit work, but rather to broaden the scope of the unit to include classifications of employees historically found outside the bargaining unit, based solely on the occasional temporary assignment of bargaining unit employees to work in those classifications.⁴ There is neither evidence nor the contention that those employees permanently assigned to the classifications in issue ever perform bargaining unit work. Thus, the attempt to include those classifications in the bargaining unit appears to raise a question concerning representation, for which a unit clarification proceeding is not the appropriate vehicle. Accordingly, the Petition herein is hereby dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

⁴ Section 21.07.00 of the collective bargaining agreement sets forth the conditions under which bargaining unit employees may be temporarily assigned to relief foremen or other positions outside the bargaining unit for a period up to 60 working days per contract year.

addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC, 20570.
This request must be received by the Board in Washington by May 25, 1999.

DATED AT Oakland, California, this 11th day of May, 1999.

/s/ James S. Scott

James S. Scott, Regional Director
National Labor Relations Board
Region 32
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